

COPY

LEWIS BRISBOIS BISGAARD & SMITH LLP

JOHN L. BARBER, SB# 160317

E-Mail: John.Barber@lewisbrisbois.com

TRACY WEI COSTANTINO, SB# 192847

E-Mail: Tracy.Costantino@lewisbrisbois.com

ANNA KIM, SB# 292082

E-Mail: Anna.Kim@lewisbrisbois.com

221 North Figueroa Street, Suite 1200

Los Angeles, California 90012

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendant ABILENE

MOTOR EXPRESS, INC.

FILED
14 FEB - 5 PM 3:20
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LARRY GRAVESTOCK, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

ABILENE MOTOR EXPRESS, INC., a
Virginia corporation, and DOES 1-10,
inclusive,

Defendants.

**NOTICE OF REMOVAL OF
ACTION TO FEDERAL COURT
PURSUANT TO 28 U.S.C. § 1441(a)
(DIVERSITY)**

Action Filed: December 19, 2013
Trial Date: None Set

PLEASE TAKE NOTICE that Defendant Abilene Motor Express, Inc.
("Defendant") by and through its counsel, remove to this Court the civil action in
the Superior Court of the State of California for the County of Orange, titled Larry
Gravestock, Plaintiff vs. Abilene Motor Express, Inc., a Virginia corporation, and
Does 1 through 10 inclusive, Defendant, Case No. 30-2013-00694515-CU-OE-
CXC, pursuant to 28 U.S.C. §§ 1332(a) and 1441(a).

///

///

///

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

4841-6779-7016.1

NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT PURSUANT TO 28 U.S.C. § 1441(a)

1 **I. INTRODUCTION**

2 1. On December 19, 2013, Plaintiff Larry Gravestock ("Plaintiff") filed a
3 Class Action Complaint ("Complaint") against Defendant in the Superior Court of
4 the State of California for the County of Orange. A true and correct copy of the
5 Complaint filed on December 19, 2013 is attached hereto as Exhibit A.

6 2. The Summons and Complaint was served on Defendant by personal
7 service on or about January 7, 2014. A true and correct copy of the Summons and
8 Complaint is attached hereto as Exhibit B.

9 3. When a plaintiff files suit in state court but could have invoked the
10 original jurisdiction of the federal courts, the defendant may remove the action to
11 federal court. 28 U.S.C. § 1441(a).

12 4. Removal of this class action is proper under 28 U.S.C. §§ 1332(a) and
13 1441(a) because complete diversity of citizenship exists between the parties and the
14 amount in controversy exceeds \$75,000, exclusive of interest and costs.

15 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c)(3) and
16 1446(a).

17 **II. REMOVAL IS PROPER BASED UPON DIVERSITY OF**
18 **CITIZENSHIP**

19 **A. Complete Diversity of Citizenship Exists**

20 6. Plaintiff filed a Class Action Complaint against Defendant, seeking to
21 represent a class of non-exempt or hourly paid employees who have been employed
22 by Defendant in California in the position of truck driver, driver, hauler, or those
23 positions with similar duties and/or similar titles, within four years prior to the filing
24 of Plaintiff's Complaint. (Exh. A, ¶ 14.) Plaintiff's Complaint makes no mention of
25 the citizenship of the putative class members.

26 7. Both at the time this action was filed and at the time of removal,
27 Plaintiff was, and still is, a citizen of the State of California. Plaintiff alleges he "is
28 a resident of Orange County in the State of California." (Exh. A, ¶ 5.)

8. Both at the time this action was filed and at the time of removal, Defendant was, and still is, a citizen of Virginia. Abilene Motor Express, Inc. is a corporation, registered in Virginia, with its headquarters in Richmond, Virginia. (Declaration of Kolen S. Jones (“Jones Decl.”) ¶ 3.) At all relevant times, Abilene Motor Express, Inc.’s high-level officers have directed, controlled, and coordinated its operations from Richmond, Virginia. (Jones Decl. ¶ 4.) *See Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). At all relevant times, Abilene Motor Express, Inc. did not and does not have any offices or locations in the State of California. (Jones Decl. ¶ 5.)

9. Since Plaintiff (a California citizen) and Defendant (a Virginia citizen) are neither citizens nor residents of the same state, complete diversity exists between all current parties and removal of this action is proper. 28 U.S.C. § 1332(a)(1).

B. The Amount in Controversy Exceeds \$75,000

10. The amount in controversy is determined by evaluating the plaintiff’s complaint and the record as a whole. *See Lewis v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). “The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s liability.” *Id.* It is not “proof of the amount the plaintiff will recover.” *Id.* (quoting *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008)).

11. Defendant denies all of Plaintiff’s allegations and specifically denies that Plaintiff is entitled to any relief. But without prejudice to its defenses in this action, Defendant avers that the amount in controversy exceeds the \$75,000 threshold for removal under 28 U.S.C. § 1332(a).

12. Plaintiff seeks to represent a class of all non-exempt or hourly paid employees who have been employed by Defendant in California in the position of truck driver, driver, hauler, or those positions with similar duties and/or similar titles, within four years prior to the filing of Plaintiff’s Complaint. (Exh. A; ¶ 14.)

13. Plaintiff estimates that the entire class is comprised of more than fifty

1 individuals. (Exh. A; ¶ 15.a.) This means the amount in controversy under
 2 Plaintiff's claims need only reach \$1,500.

3 14. However, Plaintiff's claims under *Labor Code* section 226(a) alone,
 4 places \$4,000 in controversy for *each* putative class member. *See Cal. Lab. Code*
 5 § 226(a) (Where an employer fails to comply with the requirements of section
 6 226(a), an employee can recover \$50 for the initial violation and \$100 for every
 7 subsequent violation, up to an aggregate amount of \$4,000.)

8 15. In addition to penalties under *Labor Code* section 226(a), which alone
 9 exceeds the amount in controversy requirement under 28 U.S.C. § 1332(a), Plaintiff,
 10 on behalf of himself and each of the more-than-fifty putative class members, also
 11 seeks actual, consequential, and incidental losses and damages; statutory penalties
 12 under *Labor Code* sections 203; civil penalties owed to the Labor and Workforce
 13 Development Agency pursuant to *California Labor Code* section 2698 *et seq.*; and
 14 attorneys' fees. (Exh. A, Prayer for Relief.)

15 16. Accordingly, it is facially apparent from the Complaint that the amount
 16 in controversy far exceeds \$75,000, exclusive of interests and costs, and removal of
 17 this action is proper. 28 U.S.C. §§ 1332(a), 1441(a).

18 **C. 28 U.S.C. § 1446 Requirements**

19 17. All Defendants Consent to Removal. Abilene Motor Express, Inc. has
 20 consented to removal of this action. 28 U.S.C. § 1446(b)(2)(A).

21 18. Removal is Timely. Defendant timely filed this Notice of Removal,
 22 within thirty days of service of Plaintiff's Class Action Complaint. 28 U.S.C.
 23 § 1446(b).

24 19. Removal to this Court is Proper. Plaintiff's Class Action Complaint
 25 was filed in the Superior Court of the State of California in the County of Orange.
 26 This Court is part of the division within which such action is pending. 28 U.S.C. §§
 27 84(c)(3) and 1446(a).

28 20. Pleadings and Process. Defendant has not answered or otherwise filed

1 a response to Plaintiff's Class Action Complaint. Other than the documents
2 attached as Exhibits A and B, no other pleadings, process, orders, or other papers in
3 this case have been filed, served, or received by Defendant.

4 21. Notice to All Parties and the State Court. Defendant is filing a copy of
5 this Notice of Removal with the clerk of the state court and is serving a copy on all
6 adverse parties (namely, Plaintiff). 28 U.S.C. § 1446(d).

7 **WHEREFORE**, Defendant files this Notice of Removal.

8
9 DATED: February 5, 2014

**LEWIS BRISBOIS BISGAARD &
SMITH LLP**

10
11
12 By: 

13 John L. Barber
14 Tracy Wei Costantino
15 Anna Kim
16 Attorneys for Defendant Abilene Motor
Express, Inc.
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

4845-2844-7504.1

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

12/19/2013 at 03:48:59 PM

Clerk of the Superior Court
By Irma Cook, Deputy Clerk

1 KAWAHITO SHRAGA & WESTRICK LLP
2 SHAWN C. WESTRICK (BAR NO. 235313)
3 TIMOTHY P. HENNESSY (BAR NO. 286317)
4 1990 S. Bundy Drive, Suite 280
5 Los Angeles, California 90025
6 Phone: (310) 746-5300
7 Fax: (310) 593-2520
8 E-Mail: swestrick@kswlawyers.com
9 thennessy@kswlawyers.com

10 Attorneys for Plaintiff and Class Members

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

13 LARRY GRAVESTOCK, individually, and on
14 behalf of other members of the general public
15 similarly situated,

16 Plaintiff,

17 vs.

18 ABILENE MOTOR EXPRESS, INC., a
19 Virginia corporation, and DOES 1-10, inclusive,

20 Defendants.

Case No. 30-2013-00694515-CU-OE-CXC
Judge Nancy Wieben Stock

CLASS ACTION COMPLAINT

(1) Violation of California Labor Code § 1194
(Unpaid Minimum Wages);

(2) Violation of California Labor Code § 223
(Failure to Pay Agreed Upon Wages);

(3) Violation of California Labor Code §§
226.7(a) and 512(a) (Denial of Meal Breaks);

(4) Violation of California Labor Code
§ 226.7(a) (Denial of Rest Breaks);

(5) Violation of California Labor Code §§ 201
and 202 (Wages Not Paid Upon Termination);

(6) Violation of California Labor Code §
226(a) (Improper Wage Statements);

(7) Violation of California Labor Code §§
2800 and 2802 (Failure to Reimburse
Incidental Expenses);

(8) Violation of California Labor Code § 227.3
(Failure to Pay All Vested Vacation); and

(9) Violation of California Business &
Professions Code §§ 17200, *et seq.*

Jury Trial Demanded

1 PLAINTIFF LARRY GRAVESTOCK ("PLAINTIFF"), individually and on behalf of all
2 other members of the public similarly situated, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1) This Class Action Complaint is brought pursuant to California Code of Civil
5 Procedure § 382. The monetary damages and restitution sought by PLAINTIFF exceeds the
6 minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

7 2) This Court has jurisdiction over this action pursuant to the California Constitution,
8 Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those
9 given by statute to other courts." The statutes under which this action is brought do not specify
10 any other basis for jurisdiction.

11 3) This Court has jurisdiction over DEFENDANT ABILENE MOTOR EXPRESS,
12 INC. ("DEFENDANT") because, upon information and belief, DEFENDANT is a Virginia
13 corporation, and operates out of truck yards located in Colton, Fontana, and Montebello, in the
14 State of California.

15 4) Venue is proper in this Court because, upon information and belief, the named
16 DEFENDANT transacts business, has offices and/or truck yards in this county, and the acts and
17 omissions alleged herein took place in this county.

18 **THE PARTIES**

19 5) PLAINTIFF is a resident of Orange County in the State of California.

20 6) DEFENDANT was and is, upon information and belief, a Virginia corporation
21 doing business in California, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county, the State of California, and/or the various states of
23 the United States of America.

24 7) PLAINTIFF is unaware of the true names or capacities of the DEFENDANTS sued
25 herein under the fictitious names DOES 1-10, but prays for leave to amend and serve such
26 fictitiously named DEFENDANTS pursuant to California Code of Civil Procedure § 474 once
27 their names and capacities become known.
28

1 15) There is a well-defined community of interest in the litigation and the class is easily
2 ascertainable;

3 a. Numerosity: The members of the class are so numerous that joinder of all
4 members would be unfeasible and impractical. The membership of the entire class is unknown to
5 PLAINTIFF at this time, however, the class is estimated to be greater than 50 individuals and the
6 identity of such membership is readily ascertainable by inspection of DEFENDANT'S
7 employment records.

8 b. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
9 protect the interests of each class member with whom he has a well-defined community of interest,
10 and PLAINTIFF'S claims (or defenses, if any) are typical of all class members' as demonstrated
11 herein.

12 c. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately,
13 protect the interests of each class member with whom he has a well-defined community of interest
14 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
15 obligation to make known to the Court any relationship, conflicts or differences with any class
16 member. PLAINTIFF'S attorneys and the proposed class counsel are versed in the rules
17 governing class action discovery, certification, and settlement. PLAINTIFF has incurred, and
18 throughout the duration of this action will continue to incur, costs and attorneys' fees that have
19 been, are, and will be necessarily expended for the prosecution of this action for the substantial
20 benefit of each class member.

21 d. Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve economies of time, effort and
23 expense as compared to separate lawsuits, and will avoid inconsistent outcomes because the same
24 issues can be adjudicated in the same manner and at the same time for the entire class.

25 e. Public Policy Considerations: Employers of this state violate employment
26 and labor laws every day. Current employees are often afraid to assert their rights out of fear of
27 direct or indirect retaliation. Former employees are fearful of bringing actions because they
28

1 believe their former employers may damage their future endeavors through negative references
2 and/or other means. Class actions provide the class members who are not named in the complaint
3 with a type of anonymity that allows for the vindication of their rights while protecting their
4 privacy.

5 16) There are common questions of law and fact as to the class that predominate over
6 questions affecting only individual members, including but not limited to:

7 a. Whether DEFENDANTS' failure to pay at least minimum wages to
8 PLAINTIFF and the other class members was and is in violation of California wage and hour
9 laws;

10 b. Whether DEFENDANT'S failure to pay wages, without abatement or
11 reduction, in accordance with the California Labor Code, was willful;

12 c. Whether DEFENDANT deprived PLAINTIFF and the other class members
13 of meal periods or required PLAINTIFF and the class members to work during meal periods
14 without compensation pursuant to California Labor Code section 226.7;

15 d. Whether DEFENDANT deprived PLAINTIFF and the other class members
16 of rest periods or required PLAINTIFF and the class members to work during rest periods without
17 compensation pursuant to California Labor Code section 226.7;

18 e. Whether DEFENDANT complied with wage reporting as required by the
19 California Labor Code; including but not limited to section 226;

20 f. Whether DEFENDANT failed to promptly pay all wages due to
21 PLAINTIFF and the other class members upon their discharge or resignation;

22 g. Whether DEFENDANT did not reimburse, and/or failed to reimburse
23 correctly, PLAINTIFF and other class members for out of pocket expenses actually and
24 necessarily incurred while discharging their duties pursuant to California Labor Code section 2800
25 and 2802;

26 h. Whether DEFENDANT had a policy that provided for the forfeiture of
27 vacation pay that was not used by a specified date;

28

1 i. Whether DEFENDANT engaged in unfair business practices in violation of
2 California Business & Professions Code sections 17200, et seq.; and

3 j. The appropriate amount of damages, restitution, or monetary penalties
4 resulting from DEFENDANT'S violations of California law.

5 **GENERAL ALLEGATIONS**

6 17) At all times set forth, DEFENDANT employed PLAINTIFF and other persons as
7 non-exempt or hourly paid employees to drive DEFENDANT'S trucks ("Drivers").

8 18) DEFENDANT employed PLAINTIFF as a Driver from approximately January
9 1999 through March 2012 at DEFENDANT'S Colton, California business location.

10 19) DEFENDANT paid PLAINTIFF and other class members a flat hourly rate for
11 trips over 100 miles and a per mile driven rate for trips under 100 miles.

12 20) DEFENDANT did not pay PLAINTIFF and class members for time spent waiting
13 for the pick-up and drop-off of shipments, or while the trucks underwent repairs.

14 21) DEFENDANTS had a policy that Drivers remain with trucks at all times on trips,
15 or "runs."

16 22) DEFENDANT did not reimburse, or failed to reimburse correctly, PLAINTIFF and
17 other class members for out of pocket expenses actually and necessarily incurred while
18 discharging their duties. This includes, but is not limited to, money spent on repairs needed in
19 order for PLAINTIFF and other class members to maintain and/or operate DEFENDANT'S trucks
20 that were used throughout the course of the work-day.

21 23) PLAINTIFF and other class members earned vacation days but lost them pursuant
22 to DEFENDANT'S policy that provided for the forfeiture of all vacation pay that was not used by
23 a specified date.

24 24) PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
25 mentioned, DEFENDANT was advised by skilled lawyers, professionals, employees, and
26 knowledgeable advisors about California labor and wage law, employment and personnel
27 practices, and about the requirements of California law.

28

1 25) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
2 knew or should have known that PLAINTIFF and other class members were entitled to receive all
3 the wages owed to them upon discharge.

4 26) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
5 knew or should have known that PLAINTIFF and other class members were entitled to receive all
6 meal breaks or payment of one hour of pay at PLAINTIFF'S and class members' regular rate of
7 pay when a meal break was missed.

8 27) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
9 knew or should have known that PLAINTIFF and other class members were entitled to receive all
10 rest breaks or payment of one hour of pay at PLAINTIFF'S and class members' regular rate of pay
11 when a rest break was missed.

12 28) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
13 knew or should have known that PLAINTIFF and other class members were entitled to receive
14 wages for accrued and unused vacation time at the pay rate upon which the vacation time was
15 earned and vested.

16 29) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
17 knew or should have known that policy a that provides for the forfeiture of vacation pay that is not
18 used by a specified date is an illegal under California law

19 30) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
20 knew or should have known that PLAINTIFF and other class members were entitled to receive
21 complete and accurate wage statements in accordance with California law.

22 31) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
23 knew or should have known that PLAINTIFF and other class members were entitled to receive
24 reimbursements incurred on behalf of Defendant.

25 32) PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
26 mentioned, DEFENDANT knew or should have known that it had a duty to properly compensate
27 PLAINTIFF and other members of the class and had the financial ability to pay such
28

1 compensation, but willfully, knowingly and intentionally failed to do so.

2 33) PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
3 knew or should have known that it had an obligation to pay guaranteed minimum wages for all
4 hours worked by PLAINTIFF and other members of the class including, but not limited to, the
5 time in which PLAINTIFF and class members were required to remain with trucks during repairs
6 and the time spent waiting for delayed pick-ups and drop-offs.

7 34) DEFENDANT continues to employ non-exempt or hourly paid employees within
8 California.

9 35) California Labor Code section 218 states that nothing in Article 1 of the Labor
10 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
11 [or her] under this article."

12 36) Pursuant to California Labor Code section 2699.3, PLAINTIFF provided written
13 notice to the Labor and Workforce Development Agency; stating the specific alleged violations of
14 the Labor Code and facts that support said allegations as well as informing the Labor and
15 Workforce Development Agency that PLAINTIFF would seek to recover all civil penalties
16 pursuant to California Labor Code section 2698 *et seq.*

17 **FIRST CAUSE OF ACTION**

18 **Violation of California Labor Code § 1194**

19 **(On behalf of the class)**

20 37) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the
21 material allegations set out in paragraphs 1 through 36.

22 38) California Labor Code section 218 authorizes employees to sue directly for any
23 wages or penalties due to them under the Labor Code.

24 39) California Labor Code section 1194 provides that notwithstanding any agreement
25 to work for a lesser wage, any employee receiving less than the legal minimum wage applicable to
26 the employee is entitled to recover in a civil action the unpaid balance of the full amount of the
27 applicable minimum wage, including interest thereon, reasonable attorneys' fees, and the costs of
28

1 the lawsuit.

2 40) During the relevant time period, DEFENDANT willfully failed to pay PLAINTIFF
3 and other class members the applicable minimum wage for the total number of hours spent
4 completing trips, including, but not limited to, the time in which PLAINTIFF and class members
5 were required to remain with trucks while they underwent repairs and time spent waiting for
6 delayed pick-ups or drop-offs.

7 41) DEFENDANT'S willful failure to pay PLAINTIFF and other class members their
8 applicable minimum wages for each hour worked during the workweek is in violation of
9 California Labor Code section 1194, and is therefore unlawful.

10 42) Pursuant to California Labor Code section 1194, PLAINTIFF and other class
11 members are entitled to recover their unpaid minimum wages, as well as interest, costs and
12 attorneys' fees.

13 43) Pursuant to California Labor Code section 2698 *et seq.*, PLAINTIFF and other
14 class members are entitled to recover all civil penalties owed to the Labor and Workforce
15 Development Agency.

16 **SECOND CAUSE OF ACTION**

17 **Violation of California Labor Code § 223**

18 **(On behalf of the class)**

19 44) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the
20 material allegations set out in paragraphs 1 through 43.

21 45) California Labor Code section 218 authorizes employees to sue directly for any
22 wages or penalties due to them under the California Labor Code.

23 46) California Labor Code section 223 provides that it is unlawful for an employer to
24 secretly pay a lower wage while purporting to pay the wage designated by contract.

25 47) During the relevant time period PLAINTIFF and other class members contracted
26 with DEFENDANT to be paid an hourly wage for all time worked.

27 48) During the relevant time period, DEFENDANT willfully failed to pay PLAINTIFF
28

1 and other class members the contracted for hourly wage for the total number of hours worked,
 2 instead paying them only for the prescribed number of hours, or prescribed per-mile rate, that
 3 DEFENDANT determined would be needed to complete a trip.

4 49) During the relevant time period, DEFENDANT willfully failed to pay PLAINTIFF
 5 and other class members the contracted hourly wage for hours spent including, but not limited to,
 6 remaining with trucks while they underwent repairs, waiting for pick-ups and drop-offs, and
 7 cleaning and maintaining vehicles and trailers.

8 50) DEFENDANT'S willful failure to pay PLAINTIFF and other class members their
 9 contractual wages for all hours worked, as required by California laws, violates the provision of
 10 the California Labor Code section 223, and is therefore unlawful.

11 51) Pursuant to California Labor Code section 223, PLAINTIFF and other class
 12 members are entitled to recover their unpaid hourly wages and all other statutory relief available.

13 52) Pursuant to California Labor Code section 2698 *et seq.*, PLAINTIFF and other
 14 class members are entitled to recover all civil penalties owed to the Labor and workforce
 15 Development Agency.

16 THIRD CAUSE OF ACTION

17 Violation of California Labor Code §§ 226.7(a) and 512(a)

18 (On behalf of the class)

19 53) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the
 20 material allegations set out in paragraphs 1 through 52.

21 54) At all times herein set forth, the California IWC Order and California Labor Code
 22 §§ 226.7(a) and 512(a) were applicable to PLAINTIFF and the other class members employed by
 23 DEFENDANT.

24 55) At all times herein set forth, California Labor Code section 226.7(a) provided that
 25 no employer shall require an employee to work during any meal period mandated by an applicable
 26 order of the California IWC.

27 56) At all times herein set forth, California Labor Code section 512(a) provided that an
 28

1 employer may not require, cause or permit an employee to work for a period of more than five (5)
2 hours per day without providing the employee with a meal period of not less than thirty (30)
3 minutes, except that if the total work period per day of the employee is not more than six (6)
4 hours, the meal period may be waived by mutual consent of both the employer and the employee.

5 57) At all times herein set forth, California Labor Code section 512(a) further provided
6 that an employer may not require, cause or permit an employee to work for a period of more than
7 ten (10) hours per day without providing the employee with a second meal period of not less than
8 thirty (30) minutes, except that if the total of hours worked is no more than twelve (12) hours, the
9 second meal period may be waived by mutual consent of the employer and the employee only if
10 the first meal period was not waived.

11 58) During the relevant time period, PLAINTIFF and the other members of the class
12 who were scheduled to work for a period of time no longer than six (6) hours, and who did not
13 waive their legally-mandated meal periods by mutual consent, were required to work for periods
14 longer than five (5) hours without a meal period of not less than thirty (30) minutes.

15 59) During the relevant time period, PLAINTIFF and the other class members who
16 were scheduled to work for a period of time in excess of six (6) hours were required to work for
17 periods longer than five (5) hours without receiving a meal period of not less than thirty (30)
18 minutes.

19 60) During the relevant time period, PLAINTIFF and other members of the class who
20 were scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours, and who
21 did not waive their legally-mandated meal periods by mutual consent were required to work in
22 excess of ten (10) hours without receiving a second meal period of not less than thirty (30)
23 minutes.

24 61) During the relevant time period, PLAINTIFF and the other class members who
25 were scheduled to work for a period of time in excess of twelve (12) hours were required to work
26 for periods longer than ten (10) hours without receiving a meal period of not less than thirty (30)
27 minutes.

28

62) During the relevant time period, DEFENDANT willfully required PLAINTIFF and other members of the class to work during meal periods and failed to compensate PLAINTIFF and members of the class for work performed during meal periods at their regular rate as required by California Labor Code section 226.7(b).

63) DEFENDANT'S conduct violates applicable IWC Wage Orders, and California Labor Code sections 226.7(a) and 512(a).

64) Pursuant to California Labor Code section 226.7(b), PLAINTIFF and other members of the class are entitled to recover from DEFENDANT all compensation for missed meal breaks that DEFENDANT failed to pay.

65) Pursuant to California Labor Code section 2698 *et seq.*, PLAINTIFF and other class members are entitled to recover all civil penalties owed to the Labor and Workforce Development Agency.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7(a)

(On behalf of the class)

66) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 65.

67) At all times herein set forth, the California IWC Order and California Labor Code section 226.7(a) was applicable to PLAINTIFF and other class members employed by DEFENDANT.

68) At all times herein set forth, California Labor Code section 226.7(a) provided that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

69) During the relevant time period, DEFENDANT required PLAINTIFF and other members of the class to work in excess of four (4) hours without providing a ten (10) minute rest period.

70) During the relevant time period, DEFENDANT required PLAINTIFF and other

1 members of the class to work an additional four (4) hours without providing a second ten (10)
2 minute rest period.

3 71) During the relevant time period, DEFENDANT willfully required PLAINTIFF and
4 other members of the class to work during rest periods and failed to compensate PLAINTIFF and
5 members of the class for work performed during rest periods.

6 72) DEFENDANT'S conduct violates applicable IWC Wage Orders, and California
7 Labor Code section 226.7(a).

8 73) Pursuant to California Labor Code section 226.7(b), PLAINTIFF and other
9 members of the class are entitled to recover from DEFENDANT one additional hour of pay at the
10 employee's regular hourly rate of compensation for each work day that the rest period was not
11 provided.

12 74) Pursuant to California Labor Code section 2698 *et seq.*, PLAINTIFF and other
13 class members are entitled to recover all civil penalties owed to the Labor and Workforce
14 Development Agency.

15 **FIFTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 201 and 202**

17 **(On behalf of the class)**

18 75) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the
19 material allegations set out in paragraphs 1 through 74.

20 76) At all times herein set forth, California Labor Code sections 201 and 202 provided
21 that if an employer discharges an employee, the wages earned and unpaid at the time of discharge
22 are due and payable immediately, and that if an employee voluntarily leaves his or her
23 employment, his or her wages shall become due and payable not later than seventy-two (72) hours
24 thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her
25 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

26 77) During the relevant time period, DEFENDANT willfully failed to pay PLAINTIFF
27 and the other class members who are no longer employed by DEFENDANT their wages, earned
28

1 and unpaid, either at the time of discharge, or within seventy-two (72) hours of their leaving
2 DEFENDANT'S employ.

3 78) DEFENDANT'S failure to pay PLAINTIFF and those class members who are no
4 longer employed by DEFENDANT their wages earned and unpaid at the time of discharge, or
5 within seventy-two (72) hours of their leaving DEFENDANT'S employ, is in violation of
6 California Labor Code sections 201 and 202.

7 79) California Labor Code section 203 provides that if an employer willfully fails to
8 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
9 continue as a penalty from the due date, and at the same rate until paid or until an action is
10 commenced; but the wages shall not continue for more than thirty (30) days.

11 80) PLAINTIFF and other class members are entitled to recover from DEFENDANT
12 the statutory penalty for each day they were not paid, at their regular hourly rate of pay, up to a
13 thirty (30) day maximum, pursuant to California Labor Code section 203.

14 81) Pursuant to California Labor Code section 2698 *et seq.*, PLAINTIFF and other
15 class members are entitled to recover all civil penalties owed to the Labor and Workforce
16 Development Agency.

17 SIXTH CAUSE OF ACTION

18 Violation of California Labor Code § 226(a)

19 (On behalf of the class)

20 82) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the
21 material allegations set out in paragraphs 1 through 80.

22 83) DEFENDANT has intentionally and willfully failed to provide employees with
23 complete and accurate wage statements that include, among other things, the total actual number
24 of hours worked by PLAINTIFF and the other class members, the rates of pay applicable during
25 the pay period, and the inclusive dates of the pay period.

26 84) As a result of DEFENDANT'S violation of California Labor Code section 226(a),
27 PLAINTIFF and the other class members have suffered injury and damage to their statutorily-

28

1 protected rights.

2 85) Specifically, PLAINTIFF and the other class members have been injured by
3 DEFENDANT'S intentional violation of California Labor Code section 226(a) because they were
4 denied both their legal right to receive, and their protected interest in receiving, accurate, itemized
5 wage statements under California Labor Code section 226(a).

6 86) PLAINTIFF and the other class members are entitled to recover from
7 DEFENDANT the greater of their actual damages caused by DEFENDANT'S failure to comply
8 with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
9 dollars per employee.

10 87) PLAINTIFF and the other class members are also entitled to an award of costs and
11 reasonable attorneys' fees pursuant to California Labor Code section 226(e).

12 88) Pursuant to California Labor Code section 2698 *et seq.*, PLAINTIFF and other
13 class members are entitled to recover all civil penalties owed to the Labor and Workforce
14 Development Agency.

15 **SEVENTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 2800 and 2802**

17 **(On behalf of the class)**

18 89) PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the
19 material allegation set out in paragraphs 1 through 87.

20 90) California Labor Code §§ 2800 and 2802 provide that an employer must reimburse
21 employees for all necessary and actual expenditures incurred through the discharge of their duties.

22 91) PLAINTIFF and other class members incurred actual and necessary business-
23 related expenses and costs, including but not limited to, money spent on repairs needed for
24 PLAINTIFF and other class members to maintain and/or operate DEFENDANT'S trucks that
25 were used throughout the course of the work-day.

26 92) DEFENDANT failed to reimburse PLAINTIFF and class members for these
27 expenses and costs, or did so improperly.

28

1 material allegations set out in paragraphs 1 through 100.

2 102) DEFENDANT'S conduct, as alleged in this complaint, has been, and continues to
3 be, unfair, unlawful, and harmful to the PLAINTIFF, the other members of the class, and the
4 general public. PLAINTIFF seeks to enforce important rights affecting the public interest within
5 the meaning of Code of Civil Procedure section 1021.5.

6 103) DEFENDANT'S activities as alleged herein are violations of California law, and
7 constitute unlawful business acts and practices in violation of California Business & Professions
8 Code sections 17200, et seq.

9 104) A violation of California Business & Professions Code sections 17200, et seq. may
10 be predicated on the violation of any state or federal law. In the instant case, DEFENDANT'S
11 policy and practice of requiring employees, including PLAINTIFF and class members, to work
12 through their meal and rest breaks without paying them proper compensation violates California
13 Labor Code sections 226.7(a) and 512(a). Moreover, DEFENDANT'S policy and practice of
14 intentionally underpaying the overtime owed to PLAINTIFF and the other class members is
15 unfair, unlawful, and harmful to PLAINTIFF, the other class members, and to the general public.

16 105) PLAINTIFF and the putative class members have been personally aggrieved by
17 DEFENDANT'S unlawful business acts and practices alleged herein by the loss of money or
18 property.

19 106) Pursuant to California Business & Professions Code sections 17200, et seq.,
20 PLAINTIFF and the putative class members are entitled to restitution of the wages withheld and
21 retained by DEFENDANT during a period that commences four years prior to the filing of this
22 complaint; a permanent injunction requiring DEFENDANT to pay all outstanding wages due to
23 class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5 and other applicable laws; and an award of costs.

25 **REQUEST FOR JURY TRIAL**

26 PLAINTIFF requests a trial by jury.
27
28

1 PRAYER FOR RELIEF

2 PLAINTIFF prays for relief and judgment against DEFENDANT, as follows:

3 Class Certification

- 4 1. That this action be certified as a class action;
- 5 2. That PLAINTIFF be appointed as representative of the class; and
- 6 3. That counsel for PLAINTIFF be appointed as class Counsel.

7 As to the First Cause of Action

8 1. That the Court declare, adjudge and decree that DEFENDANT violated California

9 Labor Code section 1194 by wilfully failing to pay all applicable minimum wages due to

10 PLAINTIFF and class members;

11 2. For general unpaid minimum wages and such general and special damages as may

12 be appropriate;

13 3. For pre-judgment interest on any unpaid minimum wage compensation from the

14 date such amounts were due;

15 4. For liquidated damages in an amount equal to the wages unlawfully unpaid with

16 interest thereon pursuant to California Labor Code § 1194.2;

17 5. For reasonable attorney's fees and for costs of suit incurred herein pursuant to

18 California Labor Code § 1194(a);

19 6. For any and all civil penalties owed to the Labor and Workforce Development

20 Agency as pursuant to California Labor Code section 2698 *et seq.*; and,

21 7. For such other and further relief as the Court may deem equitable and appropriate.

22 As to the Second Cause of Action

23 1. For all actual, consequential, and incidental losses and damages, according to

24 proof;

25 2. For general unpaid wages pursuant to California Labor Code § 223 and such

26 general and special damages as may be appropriate;

27 3. For pre-judgment interest on any unpaid wages;

1 4. For any and all other statutory relief available; and,

2 5. For any civil penalties owed to the Labor and Workforce Development Agency as
3 pursuant to California Labor Code section 2698 *et seq.*

4 6. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Third Cause of Action

6 1. For wages pursuant to California Labor Code section 226.7(b);

7 2. For reasonable attorneys' fees and costs of suit incurred herein;

8 3. For any and all civil penalties owed to the Labor and Workforce Development
9 Agency as pursuant to California Labor Code section 2698 *et seq.*; and

10 4. For such other and further relief as the Court may deem appropriate.

11 As to the Fourth Cause of Action

12 1. For all actual, consequential and incidental losses and damages, according to proof;

13 2. For wages pursuant to California Labor Code section 226.7(b);

14 3. For reasonable attorneys' fees and costs of suit incurred herein;

15 4. For any and all civil penalties owed to the Labor and Workforce Development
16 Agency as pursuant to California Labor Code section 2698 *et seq.*; and

17 5. For such other and further relief as the Court may deem appropriate.

18 As to the Fifth Cause of Action

19 1. For all penalties pursuant to California Labor Code section 203;

20 2. For reasonable attorneys' fees and for costs of suit incurred herein;

21 3. For any and all civil penalties owed to the Labor and Workforce Development
22 Agency as pursuant to California Labor Code section 2698 *et seq.*; and

23 4. For such other and further relief as the Court may deem equitable and appropriate.

24 As to the Sixth Cause of Action

25 1. For all actual, consequential and incidental losses and damages, according to proof;

26 2. For statutory penalties pursuant to California Labor Code section 226(e);

27 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28

1 California Labor Code section 226(e);

2 4. For any and all civil penalties owed to the Labor and Workforce Development
3 Agency as pursuant to California Labor Code section 2698 *et seq.*; and

4 5. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Seventh Cause of Action

6 1. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 2. For the reimbursement of out of pocket expenses incurred during the discharge of
9 duties pursuant to California Labor Code sections 2800 and 2802.

10 3. For reasonable attorneys' fees and costs of suit incurred herein;

11 4. For any civil penalties owed to the Labor and Workforce Development Agency as
12 pursuant to California Labor Code section 2698 *et seq.*; and,

13 5. For such other and further relief as the Court may deem appropriate.

14 As to the Eighth Cause of Action

15 1. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 2. For all penalties pursuant to California Labor Code section 203;

18 3. For reasonable attorneys' fees and costs of suit incurred herein;

19 4. For any civil penalties owed to the Labor and Workforce Development Agency as
20 pursuant to California Labor Code section 2698 *et seq.*; and,

21 5. For such other and further relief as the Court may deem appropriate.

22 As to the Ninth Cause of Action

23 1. For restitution of unpaid wages to all class members and prejudgment interest from
24 the day such amounts were due and payable;

25 2. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from DEFENDANT and determined to have been wrongfully acquired by
27 DEFENDANT as a result of violations of California Business & Professions Code sections 17200

28

1 et seq.;

2 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure section 1021.5;

4 4. For injunctive relief to ensure compliance with this section, pursuant to California
5 Business & Professions Code sections 17200, et seq.; and

6 5. For such other and further relief as the Court may deem equitable and appropriate.

7
8 DATED: December 19, 2013

Respectfully submitted

9 KAWAHITO SHRAGA & WESTRICK LLP

10
11 By 

12 SHAWN C. WESTRICK
13 TIMOTHY P. HENNESSY
14 Attorneys for Plaintiff/Class Members
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

ABILENE MOTOR EXPRESS, INC., a Virginia corporation, and
DOES 1-10, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LARRY GRAVESTOCK, individually, and on behalf of other members
of the general public similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

12/19/2013 at 03:48:59 PM

Clerk of the Superior Court
By Imma Cook, Deputy Clerk

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Orange County Superior Court

751 West Santa Ana Blvd.
Santa Ana, CA 92701

CASE NUMBER:
(NÚMERO) 30-2013-00694515-CU-OE-CXC

Judge Nancy Wieben Stock

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kawahito Shraga & Westrick LLP., 1990 South Bundy Drive, Los Angeles, CA 90025 (310) 746-5300

DATE: 12/19/2013
(Fecha)

Alan Carlson

Clerk, by
(Secretario)

Imma Cook

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Imma Cook



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

Page 1 of 1

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

ORIGINAL

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)
Larry GravestockDEFENDANTS (Check box if you are representing yourself ☐)
Abilene Motor Express, Inc.(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Richmond, VA
(IN U.S. PLAINTIFF CASES ONLY)(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.
Kawahito Shruga & Westrick LLP

1990 S. Bundy Drive, Suite 280
Los Angeles, CA 90025
(310) 746-5300Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.
Lewis Brisbois Bisgaard & Smith LLP
221 N. Figueroa Street, Suite 1200
Los Angeles, CA 90012
(213) 250-1800

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 2. U.S. Government Defendant
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1. Original Proceeding
- ☒ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No☐ MONEY DEMANDED IN COMPLAINT: \$ > 75,000.00VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. 1441(a) - Removal is proper based on diversity jurisdiction.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input checked="" type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY: Case Number:

CV-71 (11/13)

CIVIL COVER SHEET

Page 1 of 3

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input checked="" type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETIX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT):  DATE: 2/5/2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge _____ James V. Selna _____ and the assigned Magistrate Judge is _____ Robert N. Block _____ .

The case number on all documents filed with the Court should read as follows:

5:14CV170 JVS RNBx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

February 5, 2014

Date

By J.Prado

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☒

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.